

## CCB LPFM 99.25 COMMENTS

### Introduction

*Christian Community Broadcasters (CCB)* was established in early 2000, shortly after the FCC created LPFM in January 2000. Its founder, John O. Broomall, Sr., has been active in broadcast management for more than twenty years. In the mid 80's he filed an LPTV "case of first impression" which resulted in the FCC changing LPTV MX terrain shielding policy.

CCB has been an LPFM "ACE" for more than eight years, including Advocacy, Consulting, and Equipment. CCB has submitted hundreds of successful LPFM filings from routine forms such as 318 to specialized waiver filings (i.e. "Thin Air" type requests) and Petitions. CCB served as Consultant to three time-share parties in the most complex LPFM case to date, Memorandum Order and Opinion 08-50 (Providence RI MX). CCB's clients have included more than 10% of the 861 LPFM stations currently broadcasting. Some of CCB's earlier Comments were quoted in the Second NPRM (07-207).

### Comments on Specific Questions in the NPRM

CCB agrees with the FCC goals stated in V. Conclusion 85 (to) "...maximize the value of LPFM service without harming the interests of full-power FM stations or other Commission licensees." With limited spectrum, particularly in urban areas, the question is "how"? There are three approaches:

- (a) Primary status for LPFM. It is highly unlikely that this (or significantly more power) will happen though this is the goal of some LPFM operators and advocates. LPFM broadcasters with these objectives could have filed in October 2007 for a full-power NCE; at least 75 did (out of 1321 organizations filing). Also, if LPFM were ever granted Primary Status, their regulatory burden (i.e. public inspection files) would increase significantly. For example, some "Class A" TV broadcasters with Primary Status are returning to LPTV status, because of the administrative / regulatory paperwork required.
- (b) Status Quo. Apparently neither the FCC nor the most passionate full-power advocates believe that LPFM broadcasters should be required to "cease broadcasting forever" because of proposed full-power changes. Clearly all LPFM broadcasters want to thrive and continue serving the public.
- (c) Modified Primary Status. This is a term CCB has coined. This means that FPs should be allowed to make coverage changes so long as: (1) no LPFM is forced off the air and (2) LPFM coverage is not reduced.

### **NPRM 74 - Second Adjacent Waiver Standard (13 questions)**

CCB believes all changes to protect and preserve LPFM should be codified. (Obviously a waiver is preferred to no protection.) Whenever a FP proposes moves / changes that would impact any LPFM, the LPFM should be notified directly by Certified U.S. Mail, Return Receipt, of the proposed move, its predicted impact, and offer to assist in eliminating the interference. The LPFM should not be obligated to seek assistance by any specified deadline.

LPFM stations should be allowed at any time to file Minor Modification requests to: (a) move to any channel including first, second, third (if Congress approves), or 87.9; (b) move more than 5.6km; or (c) even reduce power to LP10 status. These mods should be permitted any time, upon showing that interference will be less to current or proposed full-power stations. These options should be broad in scope, not narrow.

As stated above, these changes should be permitted at any time as minor mods. Specifically, there should be no deadline. Most LPFM broadcasters do not have Counsel advising them of pending full-power actions. Even if a station knew of pending FP actions, LPFMs should not be required to

respond, unless and until there is real interference. There should be no arbitrary deadline requiring an LPFM to make changes in advance of “predicted” interference because (a) the FP may never go on the air with its interference-creating parameters or (b) the predicted interference may not occur.

CCB is a staunch supporter of LPFM. However, bona-fide interference complaints should never be ignored. The LPFM should not be penalized unless and until the FCC determines that a complaint is legitimate. CCB believes that FP stations should cover all legitimate expenses incurred by an LPFM that is displaced, including resolving complaints, engineering expense, equipment, and even reprinting of new stationery / brochures. (“Engineering assistance” should be provided by an independent consultant, not by someone with loyalties to either party.)

With 100 watts (or less) and the limitations being non-commercial, LPFM is the most economically fragile broadcast service. When encroached, an LPFM will lose listeners and financial stability in two ways: (a) directly from interference or (b) indirectly because, if displaced, the listeners will need help in finding the new dial position. While a full-power cannot be expected to pay, for example, for a newspaper ad campaign to promote the LPFM’s new dial position, it should pay for obvious expenses the LPFM incurs for equipment or stationery. CCB strongly believes that if a FP wants to reach more people, it should be responsible for identifiable harm done to another broadcaster even if it is “only” a 100 watt station!

#### **NPRM 75 - Second Adjacent Waiver Standard (5 questions)**

Section “75” asks what “type” LPFM stations should be protected and against what “type” of possible encroachment / interference. CCB believes that all LPFM stations should be protected against all “types” of interference including: (a) subsequently proposed COL modifications, (b) Petitions of Rulemaking, and (c) all other modifications that would impact LPFM. CCB comments above (at “74”) address various alternatives including change of frequency, site, and power.

Points System - From the early days of LPFM, questions, concerns, and confusion has abounded concerning “local programming” and “hours of operation.” Many people do not realize that an LPFM could operate five hours a day, solely by satellite, if no “points” promises were made. (School stations can also go silent weekends and during summer holidays). Also, some LPFM organizations believe the commitment to air “eight hours a day of local programming” did not have to be honored by “singletons” that did not need “points” to get a CP.

CCB believes that all LPFM stations – current and future – should be required to “operate at least 12 hours a day with eight hours of local programming.” Frankly, this is an easy requirement; every LPFM could comply at little to no cost, and possibly realize cost savings. First, all programming is “local” unless delivered by satellite or by mail / delivery service. “Local” does not require that programming be “live” or be “talk / non-music.” All LPFM stations have access to computers; after all, virtually all LPFM filings must be done electronically. Automation software is inexpensive; in some cases free. Every hour a station is on the air, it is required to air station ID – either by automation or live.

Using automation (or volunteers), the cost difference between operating 5, 8, 12, or 24 hours per day is literally pennies per hour – just the cost of electricity. Expenses like overhead, rent, and music licensing fees are the same regardless of the hours. Most LPFM stations already operate 24 hours a day. FCC rules already refer to a use-it-or-lose-it policy. If a station chooses not to operate certain hours, then the time should be available – involuntarily if necessary – to a time-share operator. The problem of “favoring” certain LPFM operators is resolved if all operate 8+ / 12+. All LPFM stations will then have the proposed benefits against encroachment.

#### **NPRM 76 – Obligations of FP To Potentially Impacted LPFMs (8 questions)**

As CCB has stated in its Comments above, FPs should never be authorized to do anything that would reduce the potential audience of an LPFM. Is the public interest served if one station wants to reach

more people at the expense of any other station? No! The FCC should not assume that a powerful station ("Goliath") will serve the public better than a weaker station ("David").

Without commenting separately on each NPRM 76, CCB's answer is "yes" to every question related to protecting the current audience of LPFMs. The FP's financial, technical, and notification obligations should include providing LPFM with advance notice, information about alternative channels and site, and all related expenses. Relief should not be limited to COL situations. LPFMs' greatest expenses may not be equipment (i.e. transmitter or antenna), but less obvious expenses such as site relocation.

FPs should not be required to provide notice or relief if a proposed FP change is not predicted to cause interference (i.e. 73.807) to an LPFM. If unexpected interference occurs when a FP goes on the air with a mod, its program tests should be suspended until the problem is corrected.

#### **NPRM 83 – Contour-Protection Based Licensing Standards for LPFMs (6 questions)**

It is in the public interest for LPFMs to use either the current distance spacing methodology (i.e. 73.809) or contour-based spacing (with the obligation to resolve all interference complaints or cease operation). Overlap should be allowed upon showing "a lack of population." (If there is no population in the affected area then there should be no legitimate complaints.) LPFMs should be allowed choices in methodology based not only on benefits but also on budgets. Stations that can't afford a consulting engineer would not be required to use one.

It is true that most LPFMs do not have the resources to resolve complex engineering problems. If the interference problems are caused by FP mods and moves, then the FP's resources must be used to solve the problem. LPFMs should never cause predicted interference since the FCC should never grant any LPFM application or mod that would do this. Unfortunately, if any station, FP or LPFM, causes interference that is not predicted, the burden must be on the station that caused the problem, whether the station is 100,000 watts or 100 watts.

#### **NPRM 84 – LPFM/FM Translator Priorities (5 questions)**

The FCC is currently dismissing thousands of translator applications filed by mass filers in 2003. CCB recommends that the FCC adopt new standards for LPFM that would allow all these newly-created "spectrum holes" to be used by LPFM groups (except for frequency usage changes by FPs during the past five years).

Some LPFMs have greatly enhanced their public service and audience through separately owned translators. (The programming of some LPFMs is carried on as many as four transmitters.) This benefit could be expanded with a special closed translator window in the next few months before the LPFM window. Applicants could apply only for spectrum vacated by dismissed translator applications and agree to rebroadcast only an LPFM station. (Translator operators who violate this would have their license revoked.)

All LPFMs should be given priority over all "satellites" but not over previously-filed or licensed terrestrial translators. Existing terrestrial networks should not be disturbed. Since LPFMs are local, they should be given priority over all satellites. As indicated above, CCB believes that LPFMs should be required to broadcast eight hours a day. If a satellite is replaced by an LPFM, it would be reasonable to require that the LPFM air only local programming, even if the LPFM broadcasts 24/7. Translator operators must affirm they will not change input in violation of FCC regulations, current or new.

#### **Additional Comments on Protection for Existing LPFM Stations**

The NPRM deals extensively with encroachment / interference caused by future applications and modification requests by FP and translator operators. CCB urges the FCC to provide the same options to preserve an LPFM coverage from existing interference or what will occur when previously-authorized changes are implemented. In order to preserve or enhance LPFM coverage, new regulations should

be codified allowing LPFMs to file minor mods at any time to:

- (a) change to any frequency including 87.9 upon showing reduced interference (with the legislative exception of Third Adjacent),
- (b) allow moves which do not meet distance requirements, only the change reduces predicted interference and does not cause legitimate interference complaints when the change is implemented,
- (c) reduce power to LP10 status, and
- (d) move transmitter site up to 10 miles.

#### **Comments Concerning Rule Changes FCC 07-204, Appendix B**

CCB has concerns related to some of the recent rule changes and hopes the FCC will reconsider some of its decisions.

#### **73.809 Interference Protection to Full Power Stations "A"**

Section "a" has the phrase (interference) "actually occurs" while in 3(b) an LPFM will be "required to cease operations upon the commencement of program tests ...." CCB contends that "actual" interference cannot be proven until after the program tests begin. An LPFM should not be required to cease operation based solely on prediction, but only after interference complaints are received.

#### **73.853 Licensing Requirements and Service "B"**

This rule change applies to the "top 50" markets but does not define "top 50". Is Arbitron the standard used to define "top 50" or ... what? Population density at the edge of a major market like Atlanta is properly lower than at the center of "market 75." Finding qualified board members committed to LPFM is not unique to people in small towns. Also, in many urban areas, like Atlanta, commuting long distances is a normal part of daily life. All LPFM stations should be given the same 32.1km (20) options specified in this rule change.

#### **73.855 Ownership Limits (B)**

While CCB regrets the "one-to-a-customer" limitation, it recognizes that this is not likely to change in the foreseeable future. CCB does urge the FCC to eliminate "priority applications" for public service applicants who file multiple applications. This could actually benefit these organizations by eliminating the need to guess which application should be "priority." If the FCC retains priority status, it should add a section to Form 318 for claiming this option. (In 2000-2001 some public service applications were dismissed because the "priority" status was not claimed. Form 318 had no instructions for this.)

#### **73.865 Assignment and transfer of LPFM authorizations**

CCB believes that the public interest would be greatly served by allowing all LPFM CPs and licenses to be transferred upon receipt of documentation that the "seller" would not profit. The FCC has granted or Accepted for Filing 32 ownership transfers. Twelve waivers were for CPs; CCB filed four of the CP transfers.

These are on the air now; none would be serving the public today without the waiver transfer. Allowing "major board changes" would not have saved these permits since the major purpose of the organizations was not broadcasting. For example, one Anglo church no longer wanted to use its CP. Some of its members formed a new broadcast organization, filed a 314 waiver request and today are serving the Hispanic community.

#### **73. 870 Processing of LPFM broadcast station applications**

CCB recommends that all LPFM stations be allowed to move 16.1km (10 miles) as a minor mod. This, combined with the option to move headquarters / board locations by 32.1km (20 miles) would be an invaluable aid. It would provide more options and flexibility in (a) resolving encroachment /

interference problems in urban areas and (b) resolving MX situations through site change amendments.

All options to reduce interference and preserve coverage should be available at any time as minor mods. While CCB supports the use of unused time by permitting new time-share applicants, there is a problem with this well-meaning objective. LPFM broadcasters may change their operating hours at any time. In the case of a singleton operator, no notice is required. Time-share groups may change any time. If a prospective new user of a frequency filed during a window to share a frequency basis, the current user(s) of the frequency could expand its hours the next month and block the time and expense incurred by the prospective user in preparing and filing an application. A simpler solution would be for an LPFM not wanting to use its frequency to transfer to an organization that did.

###